

## **REMARKS**

In response to the above-identified Office Action, Applicant does not add, cancel or amend any claims. Accordingly, claims 1-53 are pending.

### **I. Claims Rejected Under 35 U.S.C. § 102**

Claims 1, 2, 8, 9, 11-13, 16-18, 25, 26, 28-30, 33-35, 39-42, 46, 47, 49, 51 and 52 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,263,317 issued to Sharp, et al (hereinafter "Sharp").

Submitted herewith is a new declaration by Applicant pursuant to 37 C.F.R. § 1.131 stating that the invention of the present application was conceived prior to the filing of Sharp and that the Applicant engaged in a diligent effort to reduce the invention to practice from prior to the filing of Sharp up to the filing of the present application. The present application serves as a constructive reduction to practice. In the declaration, Applicant has provided supporting documentation to demonstrate that the elements of the independent claims were conceived prior to the filing of Sharp. Further, Applicant has provided an account of Applicant's diligent effort to reduce the invention to practice up until the constructive reduction to practice by the filing of the application on March 17, 2000. Therefore, Sharp cannot be recited as prior art under 35 U.S.C. § 102(e) against the present application.

In regard to the conversation with the Examiner on September 26, 2003, wherein concerns were raised about what the Examiner characterized as the delay of Applicant in filing the application, specifically, in not having filed the application after the invention was lost on May 25, 1999. Applicant notes that the inventor is not under obligation to file an application at the earliest possible date. Rather, it is a requirement of a declaration under 37 C.F.R. §1.131 that the inventor demonstrate that he engaged in a diligent effort to reduce the invention to practice. Applicant has demonstrated in the declaration that he made a diligent effort from a time prior to the filing of Sharp, at least as early as November 1, 1998, until the constructive reduction to practice on March 17, 2000, to reduce the invention to actual practice. During this effort to reduce the invention to

actual practice, the inventor decided to file the present application. The filing of the application was a constructive reduction to practice. Applicant believes that he has thus met the requirements of a 37 C.F.R. § 1.131 declaration thereby swearing behind the Sharp reference. Accordingly, reconsideration and withdrawal of the anticipation rejection of claims 1, 2, 8, 9, 11-13, 16-18, 25, 26, 28-30, 33-35, 39-42, 46, 47, 49, 51 and 52 are requested.

## **II. Claims Rejected Under 35 U.S.C. § 103**

Claims 3-7, 10, 14, 15, 19-24, 27, 31, 32, 36-38, 43-45, 48-50 and 53 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sharp in view of U.S. Patent No. 6,058,373 issued to Blinn, et al. (hereinafter "Blinn"), U.S. Patent No. 5,991,740 issued to Messer (hereinafter "Messer"), official notice, and that which the Examiner states is Applicant admission.

In order to establish a *prima facie* case of obviousness, the Examiner must show that the cited references combined teach or suggest each of the elements of a claim. The Examiner's obviousness rejection of these claims rely on Sharp as a primary reference in combination with Blinn and Messer, the official notice, and what the Examiner states is Applicant admission. In light of the declaration submitted herewith, as discussed in regard to the anticipation rejection above, Sharp cannot be cited against the present application. Therefore, a *prima facie* case has not been established for these claims because Sharp cannot be cited against these claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of claims 3-7, 10, 14, 15, 19-21, 27, 31, 32, 36-38, 43-45, 48-50 and 53 are requested.

### CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely claims 1-53 patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (310) 207 3800.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 9/30, 2003

  
Thomas M. Coester Reg. No. 39,637

12400 Wilshire Blvd.  
Seventh Floor  
Los Angeles, California 90025  
(310) 207-3800

#### **CERTIFICATE OF MAILING:**

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail No **EV339916272US** addressed to: Commissioner for Patents, Mail Stop Fee Amendment, P.O. Box 1450, Alexandria VA 22313-1450, on September 30, 2003.

  
Lillian E. Rodriguez

9-30-03  
September 30, 2003